LS-1066 331

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SECURITY INFORMATION

OGC Has Reviewed

Chief, Fiscal Division
Through: Comptroller
General Counsel

7 December 1951

Retroactive Advance of Leave

25X1A

1. Reference is made to your memorandum of 28 November 1951 concerning retroactive advance of sick leave. Our review of Agency Regulation [   ] confirms your belief that this section does not cover such an advance.

25X1A

2. Agency Regulation [   ] is in accord with Section 3 of The Sick Leave Act of March 14, 1936, 49 Stat. 1162. Both provide that in cases of serious disability or ailments and when the exigencies of the situation so require, sick leave may be advanced to permanent employees not in excess of thirty days. The same phraseology has been carried over into Section 204(c) of the Annual and Sick Leave Act of 1951.

3. The Comptroller General has interpreted these terms, as stated in Section 3 of The Sick Leave Act of March 14, 1936, as an intent to limit the granting of sick leave in advance to "cases of serious disability or ailments." In a decision dated April 15, 1944, 23 Comptroller General 789, he stated as follows:

> "I find no justification for holding that the clause 'and when required by the exigencies of the situation' authorizes the advancing of sick leave in cases other than those of serious disability or ailments. It would seem clear that the purpose of said clause was to prescribe the conditions or circumstances under which the sick leave may be advanced in cases of serious disability or ailments."

This clear statement of the conditions or circumstances under which sick leave may be advanced obviates the possibility of a retroactive advance of sick leave.

4. We have also considered the possibility of an advance of annual leave as a partial relief measure in the situation outlined. However, Agency Regulation [   ] allows such an advance only in cases of emergency.

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5. It is our opinion that the 63 hours in excess of accrued annual leave should be considered as leave without pay.

LAWRENCE R. HOUSTON

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